Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-17

THE FIRST NATIONAL BANK OF CHICAGO,

Petitioner,

vs.

STATE OF ILLINOIS ex rel. RICHARD K. LIGNOUL, Commissioner of Banks and Trust Companies, State of Illinois,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

To what extent does the operation of electronic banking machines by national banks off their premises constitute branch banking within the meaning of 12 U.S.C. §36(f).

ARGUMENT

This case involves the identical issues presented in the companion case of *Continental Illinois National Bank and Trust Company of Chicago* v. *State of Illinois ex rel. Richard K. Lignoul, Commissioner of Banks and Trust Companies.* Accordingly, we refer the Court to our Brief in Opposition to the Petition for Writ of Certiorari filed by Continental (No. 75-1900) and adopt our arguments therein in opposition to First National's petition in this case.

As support for their petition, First National curiously relies almost entirely on narrow state law issues which were raised and rejected by the courts below. Such reliance, of course, does not advance their petition for review by this Court.

Thus, the bank disingenuously argues that the operation "without apparent challenge by the Commissioner" of an off-premises system by certain banks in Illinois mandates the granting of the writ and the reversal of the opinion of the Seventh Circuit. A careful review of the record in this case reveals that the operation has never been expressly approved, has been monitored continuously by the Commissioner, and action will be forthcoming as appropriate pending disposition of these matters.

Furthermore, the argument makes the tenuous assumption that practices never expressly condoned assume the posture of state law and can govern the banking industry in our entire state.

Likewise, First National's position relative to section 5 (11) of the Illinois Banking Act (Ill. Rev. Stat. 1975, Chap.

16½, §105[11]) was argued and rejected by the lower courts. And, its usefulness is highly questionable due to the fact that 12 U.S.C. §36(c) requires *express* authorization from state law before national banks can branch.

Finally, the argument that the opinion below conflicts with that of the District of Columbia Circuit in *Independent Bankers Ass'n of America* v. *Smith*, 534 F.2d 921 (D.C. Cir. 1976) is patently unsupported and clearly made only to induce action by this Court. In fact, the Seventh Circuit adopted the *IBAA* opinion.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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